

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Taquann Rashea Morrison,)	C/A No.: 9:13-1945-MGL-BM
)	
Plaintiff,)	
)	
vs.)	
)	Report and Recommendation
Orangeburg County Court House;)	
Orangeburg County Public Defender Office;)	
Orangeburg County Sheriff Department;)	
Judge Goodstein,)	
Defendants.		

Plaintiff, a pre-trial detainee at the Orangeburg County Detention Center, files this matter pro se pursuant to 42 U.S.C. §1983, seeking “better treatment.” Under established local procedure in this judicial district, a careful review has been made of the *pro se* Complaint pursuant to the procedural provisions of 28 U.S.C. § 1915, 28 U.S.C. § 1915A, the Prison Litigation Reform Act, and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25, 112 S. Ct. 1728 (1992); *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827 (1989); *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594 (1972); *Nasim v. Warden, Maryland House of Correction*, 64 F.3d 951 (4th Cir. 1995) (*en banc*); *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983); and *Boyce v. Alizaduh*, 595 F.2d 948 (4th Cir. 1979).

Pro se Complaints are held to a less stringent standard than those drafted by attorneys, *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir.), and a federal district court is charged with liberally construing a Complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case. *See Hughes v. Rowe*, 449 U.S. 5, 101 S.Ct. 173 (1980); and *Cruz v. Beto*, 405 U.S.

319, 92 S.Ct. 1079 (1972). When a federal court is evaluating a *pro se* Complaint the Plaintiff's allegations are assumed to be true. *Fine v. City of N. Y.*, 529 F.2d 70 (2nd Cir. 1975). However, even when considered under this less stringent standard, the undersigned finds for the reasons set forth hereinbelow that the Complaint submitted in the above-captioned case is subject to summary dismissal. The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *Weller v. Department of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

Plaintiff complains he has no contact with his public defender, and was not provided with a "written accusation" or an attorney at his arraignment. He states he was represented by another public defender, not the one to whom he was assigned, at a preliminary hearing, but has not had a bond hearing. Plaintiff further alleges he has been detained for three (3) months and has filed several motions, *pro se*, in state court. According to the Plaintiff, he was arrested on the basis of a statement made by a co-defendant. Plaintiff alleges none of the victims implicated him, however, he admits he was chosen from a line-up. Plaintiff complains the Detention Center has "no way to study law." Plaintiff also alleges he receives small portions of food three times a day, and he claims the Detention Center has spiders, water bugs, and roaches. Plaintiff further alleges the showers have mildew, and that "no matter how many request forms are filled out still no help." He seeks a "full investigation" of all the Defendants.

A claim for relief under § 1983 must sufficiently allege that the plaintiff was injured by "the deprivation of any [of his or her] rights, privileges, or immunities secured by the [United States] Constitution and laws" by a "person" acting "under color of state law." *See* 42 U.S.C. § 1983; *Monell v. Dep't. of Soc. Serv.*, 436 U.S. 658, 690 & n.55 (1978) (noting that for purposes of § 1983

a “person” includes individuals and “bodies politic and corporate”); *see generally* 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1230 (2002). It is well settled that only “persons” may act under color of state law; therefore, a defendant in a § 1983 action must qualify as a “person.” Inanimate objects such as buildings, facilities, and grounds are not “persons” and do not act under color of state law. *See Preval v. Reno*, 57 F. Supp.2d 307, 310 (E.D. Va. 1999) (“[T]he Piedmont Regional Jail is not a ‘person,’ and therefore not amenable to suit under 42 U.S.C. § 1983.”); *Brooks v. Pembroke City Jail*, 722 F. Supp. 1294, 1301 (E.D.N.C. 1989) (“Claims under § 1983 are directed at ‘persons’ and the jail is not a person amenable to suit.”). Thus, in this instance, the Defendant “Orangeburg County Court House” is not a “person” as that term is defined for purposes of Section 1983. The courthouse consists of buildings and grounds. Therefore, the Defendant “Orangeburg County Court House” is entitled to summary dismissal as a party Defendant.

With respect to the Defendant Sheriff’s Department, Sheriff’s Departments in South Carolina are state agencies, not municipal departments. *See Edwards v. Lexington Cnty. Sheriff’s Dep’t*, 386 S.C. 285, 287 n. 1, 688 S.E.2d 125, 127 n.1 (2010) (“[U]nder South Carolina law, the sheriff and sheriff’s deputies are State, not county, employees.”); *Allen v. Fid. and Deposit Co.*, 515 F. Supp. 1185, 1189–91 (D.S.C. 1981) (County cannot be held liable for actions of deputy sheriff because deputy sheriffs serve at pleasure of the Sheriff, not the County), *aff’d*, 694 F.2d 716 (4th Cir. 1982) [Table]; and *Comer v. Brown*, 88 F.3d 1315, 1332 (4th Cir. 1996) (suit against Sheriff of Greenville County: “. . . Sheriff Brown is an arm of the State.”). Thus, the Defendant “Orangeburg County Sheriff[’s] Department” is an agency of the State of South Carolina, and the Eleventh Amendment to the United States Constitution divests this court of jurisdiction to entertain a suit

brought against the State of South Carolina or its integral parts.¹ See *Alden v. Maine*, 527 U.S. 706, 713 (1999)(immunity “is a fundamental aspect of the sovereignty which the States enjoyed before the ratification of the Constitution, and which they retain today...except as altered by the plan of the Convention or certain constitutional Amendments.”); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 76 (1996)(Eleventh Amendment prohibits Congress from making the State of Florida capable of being sued in federal court); and *Blatchford v. Native Village of Noatak and Circle Village*, 501 U.S. 775, 786 (1991)(Congressional power to abrogate Eleventh Amendment immunity can only by exercised by clear legislative intent). See also *Federal Maritime Commission v. South Carolina State Ports Authority, et. al.*, 535 U.S. 743, 743 (2002)(state sovereign immunity precluded Federal Maritime Commission from adjudicating a private party’s complaint against a non-consenting State).

Although the language of the Eleventh Amendment does not explicitly prohibit a citizen of a state from suing his own state in federal court, the Supreme Court in *Hans v. Louisiana*, 134 U.S. 1 (1889), held that the purposes of the Eleventh Amendment, *i.e.*, protection of a state treasury, would not be served if a state could be sued by its citizens in federal court. Thus, the Eleventh Amendment bars such suits unless the State has waived it’s immunity² or unless Congress has exercised its power under § 5 of the Fourteenth Amendment to override that immunity. When

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The Eleventh Amendment provides: “The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

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The State of South Carolina has not consented to suit in a federal court. See S. C. Code Ann. § 15-78-20(e)(1976) which expressly provides that the State of South Carolina does not waive Eleventh Amendment immunity, consents to suit only in a court of the State of South Carolina, and does not consent to suit in a federal court or in a court of another State.

§1983 was passed as part of the Civil Rights Act of 1871, Congress did not interject any language in the Act which would specifically override the immunity of the states provided by the Eleventh Amendment. Consequently, a claim brought pursuant to 42 U.S.C. §1983 does not override the Eleventh Amendment. *See Quern v. Jordan*, 440 U.S. 332, 343 (1979).

Additionally, as noted above, the clear language of § 1983 requires that only a “person” may be sued by another where a deprivation of constitutional rights can be shown. In the case of *Will v. Michigan Department of State Police*, 491 U.S. 58, 109 (1989), the Supreme Court analyzed the interplay between § 1983 and the Eleventh Amendment of the Constitution, and expressly held that the states are not “persons” within the meaning of § 1983. Hence, because the Eleventh Amendment provides an absolute immunity for the states against all suits, the “person” referred to in § 1983 cannot include a state or any divisions of a state, and the Orangeburg County Sheriff’s Department is therefore entitled to dismissal as a party Defendant.

Furthermore, Plaintiff can not proceed against the Defendant “Orangeburg County Public Defender’s Office” because the “office” as well as the attorneys in that office have not acted under color of state law. *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)[In order to state a cause of action under 42 U.S.C. § 1983, a plaintiff must allege that the defendant(s) deprived him or her of a federal right under color of state law]. An attorney, whether retained, court-appointed, or a public defender, does not act under color of state law, which is a jurisdictional prerequisite for any civil action brought under 42 U.S.C. § 1983. *See Deas v. Potts*, 547 F.2d 800 (4th Cir. 1976)(private attorney); *Hall v. Quillen*, 631 F.2d 1154, 1155-1156 & nn. 2-3 (4th Cir. 1980)(court-appointed attorney); and *Polk County v. Dodson*, 454 U.S. 312, 317-324 & nn. 8-16 (1981)(public defender). *See also Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982)(As a matter of substantive

constitutional law the state-action requirement reflects judicial recognition of the fact that “most rights secured by the Constitution are protected only against infringement by governments...”) *citing Flagg Brothers*, 436 U.S. 149, 156, 98 S.Ct. 1729, 1733 (1978).

With respect to Judge Goodstein, she is a state circuit judge, and as such enjoys immunity from suit for all actions taken in her judicial capacity. *See Mireles v. Waco*, 502 U.S. 9 (1991); *Stump v. Sparkman*, 435 U.S. 349, 351-64 (1978); *Pressly v. Gregory*, 831 F.2d 514, 517 (4th Cir. 1987)[a suit by South Carolina inmate against two Virginia magistrates]; and *Chu v. Griffith*, 771 F.2d 79, 81 (4th Cir. 1985)[“It has long been settled that a judge is absolutely immune from a claim for damages arising out of his judicial actions.”]; *see also Siegert v. Gilley*, 500 U.S. 226 (1991) (immunity presents a threshold question which should be resolved before discovery is even allowed); *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (absolute immunity “is an immunity from suit rather than a mere defense to liability”); *Accord Bolin v. Story*, 225 F.3d 1234 (11th Cir. 2000) (discussing judicial immunity of United States District Judges and United States Circuit Judges). Therefore, Judge Goodstein is entitled to dismissal as a party Defendant.

Additionally, to the extent Plaintiff is seeking habeas relief, absent extraordinary circumstances federal courts are not authorized to interfere with a state’s pending criminal proceedings. *See, e.g., Younger v. Harris*, 401 U.S. 37 (1971) (“Since the beginning of this country’s history Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts”); *Cinema Blue of Charlotte, Inc. v. Gilchrist*, 887 F.2d 49 (4th Cir. 1989). In *Cinema Blue*, the Fourth Circuit ruled that federal district courts should abstain from constitutional challenges to state judicial proceedings, no matter how meritorious, if the federal claims have been or could be presented in an ongoing state judicial proceeding. *Cinema Blue of*

Charlotte, Inc. v. Gilchrist, 887 F.2d at 52. Because Plaintiff's claims may be adequately addressed in his ongoing state court criminal proceedings, this court should abstain from addressing these claims.

Finally, Plaintiff has not named a Defendant who is responsible for his current conditions of confinement. As discussed hereinabove, Defendants "Orangeburg County Court House," "Orangeburg County Public Defender['s] Office," and "Orangeburg County Sheriff['s] Department," are not proper parties in a Section 1983 action, while Defendant Goodstein has no responsibility for the conditions at the Orangeburg County Detention Center. ~~_____~~ ✓

RECOMMENDATION

Accordingly, it is recommended that the Court dismiss the complaint in the above-captioned case *without prejudice* and without issuance and service of process. See 28 U.S.C. § 1915(e)(2)(B); and 28 U.S.C. § 1915A [the court shall review, as soon as practicable after docketing, prisoner cases to determine whether they are subject to any grounds for dismissal].


Bristow Marchant
United States Magistrate Judge

August 27, 2013
Charleston, South Carolina

The Plaintiff's attention is directed to the important NOTICE on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).